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ABSTRACT

The New York Department of Education's plan to implement its affirmative action policy providing equal employment opportunities to all persons is described in this report. Information is provided on the policy statement and policy dissemination process; implementation responsibilities; goals and timetables, personnel policies, and practices; provisions for Vietnam veterans and persons with disabilities; sexual harassment policy; discrimination complaint procedure; affirmative action training; program evaluation and reporting; the minority/women-owned business enterprise program; and the annual report on agency affirmative action activities. (LMI)

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AFFIRMATIVE ACTION PLAN

SIXTH EDITION

The University of the State of New York
THE STATE EDUCATION DEPARTMENT

1991

THE UNIVERSITY OF THE STATE OF NEW YORK

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PART I

Policy Statement

It is the policy of the New York State Education Department to provide equal employment opportunity to all persons without regard to ethnicity, color, gender, religion, age, national origin, disability, Vietnam Era veteran status, or other factors not related to the ability to do the job. As Commissioner of Education, I am personally committed to assuring that the Education Department will act affirmatively to develop avenues of entry and mobility for minorities, women, individuals having disabilities, and Vietnam Era veterans through the following activities:

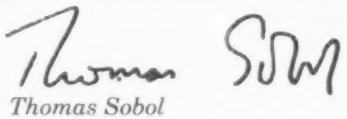
- Development of programmatic approaches to the elimination of all unjust exclusionary employment practices, policies, and consequences;
- Development of educational and training programs for all employees, with particular emphasis on our goal of upgrading minorities, women, individuals with disabilities, and Vietnam Era veterans;
- Development of personnel practices, policies, and career ladders to assist and encourage upward mobility of employees;
- Development of mechanisms for swift and judicious resolution of problems of human rights discrimination consistent with our policy, the Governor's executive orders, and other applicable legal statutes.

To implement this policy, the State Education Department has adopted a plan, which conforms with all relevant Federal and State nondiscrimination and affirmative action regulations including, but not limited to: the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973, the Vietnam Era Veteran's Readjustment Act of 1974, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, Title IX of the Education Amendments of 1972, the Equal Employment Opportunity Act of 1972, the Americans with Disabilities Act of 1990, the New York State Human Rights Law, and Governor Cuomo's Executive Order 6. This document updates and replaces previous versions of that plan.

The plan applies equally to all job classifications, titles, and types of appointments under the Education Department's jurisdiction. It governs all the Education Department's employment policies, practices, and actions including, but not necessarily limited to: recruitment, employment, disciplinary actions, rate of pay or other compensation, advancement, reclassification, reallocation, promotion, demotion, and all employee benefits. Reasonable accommodations will be made for individuals having disabilities.

To assist me in my responsibility as chief executive officer for an effective affirmative action program, I have appointed a full-time Affirmative Action Officer to be responsible for day-to-day implementation of necessary programs and policies as outlined in the plan, which will be available in the Affirmative Action Office. I will seek to provide that office with all resources necessary for the execution of its program responsibilities. Moreover, I will insist that all managers, supervisors, and employees make diligent and consistent efforts to implement this policy in day-to-day program and employment decisions.

The mission of the New York State Board of Regents and the State Education Department is to ensure the provision of educational, professional, cultural, and rehabilitation services of high quality to all of the people of the State regardless of their age, background, or condition. Affirmative Action considerations will be an integral part of all activities performed in the furtherance of our mission and in meeting our responsibilities to the State's residents.



Thomas Sobol
Commissioner of Education
April 1991

PART II

Dissemination of Policy

The Education Department will undertake the activities listed below to disseminate its Affirmative Action Plan and Program, both internally and externally.

A. Internal

1. A copy of the Affirmative Action Policy Statement will be posted on each floor of every building and facility on at least one bulletin board that is conspicuous and accessible to employees and, to the extent possible, to the public.
2. A copy of the Affirmative Action Plan will be distributed to each employee and will be referenced in policy and/or personnel manuals.
3. Protected class* employees will be represented in any Department brochures, publications, manuals, reports, and advertisements which depict the Department work force.
4. Department newsletters will include descriptions of the Affirmative Action Policy and Plan, and will reinforce the Department's commitment to equal employment opportunity and Affirmative Action through periodic updates.
5. Meetings will be scheduled at least annually with managers and supervisors from all areas to review the Affirmative Action Plan, to discuss program goals and objectives, and to explain management responsibilities for implementation.
6. Union officials will be informed of the Department's Affirmative Action Policy and their cooperation will be sought.

B. External

1. The Affirmative Action Plan will be made available to the public upon requests to the Affirmative Office or the Division of Personnel.
2. The Affirmative Action Policy will be made known to recruitment sources through oral and written communication, including methods that are accessible to individuals having disabilities.
3. The Affirmative Action Policy will be made known to organizations, colleges, and community groups interested in encouraging equal employment opportunities for minorities, women, individuals having disabilities, and Vietnam Era veterans.
4. All applicants will be informed of the Department's Affirmative Action Policy.
5. All vendors and suppliers with whom the Department conducts business will be notified of the Affirmative Action Policy and their cooperation will be sought.
6. The Department will ensure that purchase orders indicate that the Department is an Equal Opportunity/Affirmative Action employer.

C. Feedback

Procedures will be utilized to obtain information from employees, advocacy groups and consumers of the Department's services about the efficacy of and the need to improve the Affirmative Action Program. These may include:

— Interviewing protected class employees

— Surveying employees, outside agencies, and advocacy groups

— Obtaining evaluations from affirmative action training program participants.

* Protected class employees, for purposes of Affirmative Action, are those who are minority representatives (Black, Hispanic, Asian or Pacific Islander, Native American or Alaskan), women, Vietnam Era veterans, or disabled individuals.

PART III

Implementation Responsibilities

A. Commissioner of Education

Consistent with applicable laws, rules and regulations, and Executive Orders, ultimate responsibility for the achievement of equal opportunity in the Education Department through the use of the Affirmative Action Plan and other means lies with the Commissioner of Education.

B. Affirmative Action Officer

The Commissioner of Education has delegated day-to-day programmatic responsibility for the agency's Affirmative Action Program to the Affirmative Action Officer, who reports directly to the Commissioner of Education.

The Affirmative Action Office's responsibilities focus on developing, coordinating the implementation of, and monitoring the Education Department's Affirmative Action Program. In addition to traditional affirmative action functions, the Department's Affirmative Action Office is designated to serve as Title IX and Section 504 Coordinator for purposes of employment. The Office, in conjunction with the Division of Education Business Management Services, administers a program for Minority and Women Owned Business Development.

The duties of the Affirmative Action Officer include, but are not limited to, the following:

- planning, developing, coordinating, implementing, and monitoring the Department's Affirmative Action Program
- working with the Personnel Office in the recruitment and examination program, including:
  - participating in examination planning conferences
  - reviewing proposed minimum qualifications for all positions
  - maintaining resume files
- reviewing, monitoring, and making recommendations on Department personnel policies
- consulting, developing, and participating in Affirmative Action training programs
- assuring that reasonable accommodations are provided to all known qualified disabled applicants and employees
- researching, compiling, and analyzing data related to the representation of protected class employees in the Department's work force
- participating in conferences, meetings, forums, discussion groups, panels, and seminars concerned with Affirmative Action and Equal Employment Opportunity
- keeping abreast of and interpreting laws, rules, regulations, and court decisions impacting on the Affirmative Action Program
- coordinating Affirmative Action activities in the Department's central, regional, and institutional offices and ensuring that all locations are in compliance with Section 504 of the Rehabilitation Act of 1973
- developing employment goals with specific and special emphasis on programs for pre-entry, entry, and promotional titles
- developing and implementing systems for monitoring and attaining such goals
- developing an internal discrimination complaint procedure
- investigating and resolving complaints of discrimination
- informing complainants of rights and external avenues of redress.

B.1. Liaison With Special Groups

The Affirmative Action Office provides technical assistance to other areas of the Department concerned with equity and civil rights. It is an ex officio member of various Commissioner's advisory

committees including the Advisory Council and Task Force on Equal Opportunity for Women, the Task Force on Minority Access to the Licensed Professions, the Task Force on Management Development and Training, and the Management/Confidential Employees Performance Evaluations Appeals Board. The Affirmative Action Officer regularly meets with individual staff members, groups of employees and outside lay or advocacy groups, including employee organization representatives, to advance the objectives of the Department's Affirmative Action Program, and serves as the representative to the New York State Affirmative Action Advisory Council.

C. Responsibilities of Office of Personnel and Labor Relations

The Personnel Officer shall establish and maintain a close working relationship with the Affirmative Action Officer in the implementation of the Department's human resource management program. (See Part IV)

Responsibilities shall include, but are not limited to, the following:

- maintaining all personnel records in a manner consistent with applicable laws and regulations, as well as the requirements of the Affirmative Action Plan
- developing and maintaining all personnel directives in a manner that is consistent with applicable laws and regulations, and the Affirmative Action Plan
- continuously reviewing the jurisdictional classification system, procedures, benefit packages, l ve policies, training and career development programs, and other employment practices to assure that all such practices conform with current legal and regulatory requirements, and the Affirmative Action Plan
- implementing the approved affirmative recruitment plan to enable all protected class individuals to have equal access to the employment opportunities available.

D. Responsibilities of Other Agency Offices/Divisions

The Executive Staff shall provide organizational linkages and hold regular meetings with the Affirmative Action Officer to ensure that the Affirmative Action Officer is informed of the activities of these offices and has an opportunity to evaluate the Affirmative Action impact of these activities. These offices shall also ensure that Affirmative Action goals and objectives are met within the respective program areas.

E. Responsibilities of Managers and Supervisors

The obligations of managers and supervisors include, but are not limited to:

- adhering to departmental policies designed to eliminate discriminatory practices (e.g., employment interviewing, appointment monitoring, adding to the Affirmative Action Resource file, etc.)
- actively recruiting and/or assisting in recruiting members of protected classes for vacancies
- providing leadership and setting a positive example to subordinate staff in assuring applicants/employees are provided equal opportunity for appointment, promotion, transfer, training, assignments, etc., regardless of ethnicity, color, national origin, gender, age, religion, marital status, or disability
- seeking out businesses owned by minorities and women, as sources of goods and services
- working cooperatively with the Affirmative Action Officer, assisting in the identification of problem areas and the establishment and active pursuit of numerical and programmatic goals and timetables
- providing staff appointed to Affirmative Action Committees with the time and support necessary to assure their full participation in Committee activities
- maintaining an active information sharing network with Affirmative Action staff, raising key issues and providing accurate and timely reports as required for Affirmative Action purposes
- including in staff performance evaluations an assessment of each individual's knowledge, awareness, and sensitivity to the Department's Affirmative Action Plan and Program
- conducting periodic evaluations of targeted program areas to assure equal treatment of protected class service consumers
- participating in Affirmative Action/Equal Employment Opportunity training provided to supervisory and management personnel.

E.1. Individual Employee Responsibilities

Every employee of the State Education Department, whether manager or not, is responsible for implementing the affirmative action program by:

- reading this plan thoroughly
- learning more about equal employment
- treating coworkers with courtesy and encouragement, especially those who may be working in nontraditional jobs
- eliminating derogatory terms, comments or jokes related to personal characteristics (such as gender, ethnicity, national origin, religion, age) from conversations in the workplace
- working cooperatively with the Affirmative Action Officer in complaint investigations, training programs, and other activities as requested.

F. Agency Affirmative Action Committee Responsibilities

To assist with evaluating the effectiveness of the program, an Affirmative Action Advisory Committee serves as an advisory group to the Commissioner of Education and the Affirmative Action Officer. Each of the 14 members of the group is nominated by the Deputy Commissioners and confirmed by the Commissioner of Education. The composition of this group of employees seeks to represent various points of view by virtue of protected class membership, occupational category, and program area. Training will be provided to committee members to increase their effectiveness.

The committee will meet a minimum of six times per year or more often as needed. Among its duties will be to conduct periodic reviews of the plan, to identify resources and concerns, and to review recommendations for changes. Based on such reviews, it will recommend strategies for improving program implementation. It will assist in dissemination of information and in clarification of the program to managers, staff, and to interested community groups. It will also assist in identifying and expanding recruitment sources to enable the Department to attract a broader pool of applicants.

It should be noted that there are a number of other Department advisory committees through which protected class viewpoints are also made known to the Commissioner of Education. These include the Commissioner's Advisory Councils on Equal Opportunity for Women, on Vocational and Educational Services for Individuals with Disabilities, and on Bilingual Education.

PART IV

Goals and Timetables, and Personnel Policies and Practices Related to Affirmative Action

The intent of the Department under Affirmative Action is to give deliberate consideration to increasing the numbers of qualified minority, disabled, female, and Vietnam Era veteran representatives at every level of employment throughout the Department. The establishment of goals is done to help define expectations and to measure our progress toward fulfilling those expectations.

The distinction between goals and quotas can be elusive, and it is critical to approach this issue with sensitivity and common sense. The ability of a candidate to perform successfully on the job continues to be the principal criterion of selection. A good faith effort, coupled with common sense, and selection decisions reached in strict accordance to job-related factors should help meet our goals, while at the same time identifying those best qualified for employment.

As a general rule, affirmative action goals are determined by comparing the percentage of protected class incumbents employed by the agency with the estimated percentage of those in the potential labor force possessing bona fide qualifications for appointment. The goals attempt to arrive at a work force that is consistent with the composition of the labor force. Timetables for achieving these goals must take into consideration projected turnover and accession rates of personnel. Because of so many uncertainties concerning public sector employment, these goals are reviewed and updated annually.

Targeted Title Projects

After establishing goals and timetables for eliminating the underutilization of protected class groups within each Federal Occupational Category, the Education Department will target titles for special affirmative action treatment and consideration as a major strategy in the Department's goal attainment program, in conformance with Civil Service guidelines. Development and implementation of Targeted Title Projects will follow the schedule to be established by the Department of Civil Service in the near future.

Personnel Policies and Practices Related to Affirmative Action

All personnel policies and practices of the State Education Department are considered to be related to affirmative action. Our purpose is to assure that equal employment opportunity is available to every applicant and employee from the very beginning of the employment process, when position descriptions are first formulated, through the end of that process, when a diversely representative work force is working in harmony to accomplish the educational, cultural, and occupational objectives which are this Department's responsibility.

On a continuing basis, we are committed to identifying and overcoming problem areas in employment practices which have an adverse impact on protected class individuals. This ongoing review includes, but is not limited to, the following:

—position descriptions
—examinations
—posting openings
—recruitment
—search committees
—application
—interviews
—selection
—training for career advancement
—special assignments
—performance evaluations
—promotion
—transfer
—reassignment
—relocation
—layoff and recall
—granting leaves
—grievances
—disciplinary action
—termination
—Civil Service regulations
—Division of Budget procedures affecting personnel practices

Managers, personnel specialists, and other employees given authority to hire or promote, have special responsibilities to see that affirmative action principles and practices are incorporated in their activities, and to actively communicate with the Affirmative Action Officer in order to develop strategies for overcoming adverse impact of personnel policies and practices and for fostering opportunities for protected class persons. The following sections explain the minimum expectations with regard to various employment practices. The plan section on individuals having disabilities explains additional needs of that protected class, such as reasonable accommodations.

Civil Service Rules and Regulations

Traditional interpretations and applications of Civil Service laws, rules and regulations, instead of producing a representative work force, may result in and perpetuate the denial of employment opportunities to protected class members in New York State Government Service. To avoid this problem, the Education Department, with the cooperation, advice and guidance of Civil Service, shall seek to interpret and use existing statutes, regulations and policies so as to increase the representation of protected class groups and meet established goals and timetables pursuant to Executive Order 6. Civil Service will assist this Department in the exploration and affirmative use of such mechanisms as 70.4 transfers, New Missions, 55.b and 55.c appointments, other than competitive class appointments, position classifications/reclassifications, traineeships and transition programs to promote the hiring and career advancement of protected class members.

Review of Position Descriptions and Job Qualifications

To assure that representatives of various protected classes have equal opportunity to compete for openings, position descriptions and qualifications required of candidates will be regularly reviewed.

A key point in this process is at the time Department representatives discuss the scope of an Education Department examination with Department of Civil Service staff. Scope conferences include discussions of the wording of qualification standards, providing an opportunity to make changes. Accordingly, the Division of Personnel will routinely notify the appropriate Deputy Commissioner's Program Coordinator as well as the Affirmative Action Officer of scheduled scope conferences.

Whenever an opening occurs or is anticipated, or when an examination for a specific title is scheduled, the appropriate Deputy Commissioner will initiate a review of the position description and qualifications required to determine what revisions if any need to be made.

Qualifications (i.e., knowledge, skills and abilities) will be established which validly enable an incumbent to perform the duties of the position. Experiential and educational criteria must be pertinent to the job at hand and broad enough to allow for competition by representatives of various protected classes. To the extent that physical and mental job requirements for specific titles tend to screen out individuals who have disabilities such qualifications must be validly job-related and necessary for the safe and effective performance of the job. Technical advice regarding job analysis, standard setting, and potential impact on protected classes is available from the Division of Personnel and the Affirmative Action Office.

Revisions identified should be sought immediately. Results of these review and revision efforts should be reported as part of the quarterly affirmative action reporting responsibilities.

In addition, the Affirmative Action Office will coordinate specific reviews of the minimum qualifications set for the noncompetitive and labor class titles listed below.

Library Aide
Museum Exhibit Technician
Mail and Supply Helper
Bindery Helper
Watchman
Cleaner
Laborer
Maintenance Helper
Window Washer
Building Service Aide
Braille Telephone Operator
Launderer
Senior Launderer
Supervising Garment Worker
Child Care Aide I
Child Care Aide II
Cook
Painter
Head Cook/Housekeeper

Clinical Physician PT)
Ophthalmologist (PT)
Laboratory Worker
Offset Printing Machine Operator
Grounds Worker
Janitor
Motor Vehicle Operator
Museum Attendant
Senior Museum Attendant
Maintenance Assistant
Laborer Supervisor
Senior Chauffeur
Assistant Regents Printer
Bookbinder
Building Guard
Carpenter
Electrician
General Mechanic
Museum Exhibit Assistant Audio Visual Operation and Repair
Plumber and Steamfitter
Secretarial Stenographer
Bindery Shop Supervisor
Education of the Disadvantaged Program Aide
Museum Exhibit Technician (Installation)
Museum Exhibit Technician (Audio Visual Fabrication)
Museum Exhibit Technician (Metal Fabrication)
Museum Exhibit Technician (Wood Construction)
Regents Printer
Specialist in Student Affairs
Museum Exhibit Specialist (Diorama Accessories)
Senior Museum Exhibit Specialist (Photography)
Senior Museum Exhibit Specialist (Restoration)
Senior Museum Exhibit Specialist (Installation)
Senior Museum Exhibit Specialist (Model Making)
Senior Museum Exhibit Specialist (Taxidermy)
Supervising Museum Exhibit Technician (Audio Visual Design)
Senior Museum Exhibit Planner (History)
Senior Museum Exhibit Planner (Natural Science)
Senior Professional Conduct Investigator
Supervising Museum Exhibit Specialist (Photography and Audio Visual Applications)
Supervising Museum Exhibit Specialist (Support Services)
Supervising Museum Exhibit Specialist (Production Art and Illustration)
Supervising Museum Exhibit Specialist (Preparation)
Associate Museum Exhibit Designer
Printing Shop Superintendent
Supervising Museum Exhibit Specialist (Fabrication)
Associate Museum Exhibit Planner (History)
Principal Museum Exhibit Designer
Building Superintendent
Museum Exhibit Publications Editor
Senior Administrative Assistant
Supervising Professional Conduct Investigator
Principal Museum Exhibit Specialist (Production)
Supervising Museum Exhibit Designer
Supervising Museum Exhibit Planner (Natural Science)
Director, School Health Demonstration Program
Associate in Native American Education
Affirmative Action Officer IV
Coordinator of Doctoral Program Review
Museum Exhibit Specialist (Film Production)
Museum Exhibit Specialist (Photography)
Museum Exhibit Specialist (Production Art)
Museum Exhibit Specialist (Restoration)
Museum Exhibit Specialist (Special Effects)
Museum Exhibit Technician (Wood Fabrication)
Regents Night Printer
Secretarial Assistant
Senior Museum Exhibit Technician (Metal Fabrication)
Printing Shop Assistant Superintendent
Senior Museum Exhibit Designer
Senior Museum Exhibit Specialist (Film Production)
Senior Museum Exhibit Specialist (Molded Plastics)
Educator Services Administrative Coordinator
Chief, Historical and Anthropological Services
Chief of Museum Exhibit Design and Production
Chief Scientist (Biology)
Chief Scientist (Geology)
Coordinator of Resource Allocation Plan
Director of Foreign Area Studies
Director of State Science Service
Janitor
Museum Attendant
Museum Instructor (PT)
Supervising Building Service Aide

Examination Activity

To ensure that affirmative action becomes an integral and ongoing element in all of the Department's examination activity, the Affirmative Action and Personnel Offices will immediately begin utilizing the Affirmative Action Guide for Agency Examination Activity as the agency procedure for the routine and systematic involvement of the two offices in general examination activity.

Recruitment

In order to provide as much lead time as possible for expanded recruitment, whenever an opening occurs or is anticipated, the appropriate Deputy Commissioner will direct that an analysis be made of the recruitment sources usually contacted in filling that type of position, even if there is routinely an overabundance of self-referrals for this type of employment. Additional sources of protected class referrals should be identified and contact information listed for those sources most likely to refer appropriate protected class representatives. This analysis should be submitted to the Division of Personnel so that when (or if) permission to fill is given, the Division can immediately send notices, application forms, etc. A copy of the analysis should be sent to the Affirmative Action Office.

Search and Hiring Procedures

Affirmative action guidelines control all hiring. The procedures for Recruitment and Selection outlined in the Personnel Section of the Administrative Policy Handbook are designed to implement relevant Federal and State laws and have been certified by the Department of Civil Service. They are intended to insure fairness and equity to all candidates and to maximize opportunities to recruit members of the protected class.

Managers who will be engaging in a recruitment and selection process should contact the Affirmative Action Office or the Personnel Office, 474-1265 or 474-5215 for information about the Procedures for the Recruitment and Selection of Personnel and a set of forms, including the Affirmative Action Search Plan (Form AA-1) and the Search Report (Form AA-2).

Internal Recruiting Resources

When any openings occur or are anticipated or when new positions are created, the appropriate Deputy Commissioner will notify the Division of Personnel and the Affirmative Action Office of the potential opportunity. The notice should include title, grade level, qualifications, anticipated date of hire, and a contact person. It is understood that such notices cannot be a guarantee that permission to fill the vacancy has been obtained. However, this procedure will enable staff of these offices to provide appropriate career guidance to interested employees who may make inquiries. It will also enable these offices to refer appropriate protected class candidates for consideration.

Since it has long been the policy of the Department to fill higher graded positions as far as possible by promotion from lower grade levels, managers who have authority to hire or promote will encourage applications from existing staff in order to include protected class employees in the candidate pool wherever possible.

If interested in specific opportunities, employees should not hesitate to make this interest known by submitting a letter directly to the Division of Personnel, expressing the desire to be considered for specific openings.

The Department works closely with the State's Clerical and Secretarial Employee Advancement Program, created as a result of negotiations with the Civil Service Employees Association (CSEA), in order to expand bridging opportunities for clerical workers to professional positions. Managers planning to increase staff size or to implement new programs are encouraged to keep bridging in mind and to provide such opportunities when possible. The Division of Personnel provides technical assistance on request.

External Recruiting Resources

The Division of Personnel maintains a comprehensive list of minority group organizations located nationwide, to whom announcements of vacancies are routinely sent. In addition, depending on the position to be filled, recruitment assistance may be requested from the Department of Civil Service; Division of Affirmative Careers; the Department of Social Services; Commission for the Blind and Visually Handicapped; as well as our own Office of Vocational and Educational Services for Individuals with Disabilities and the Job Network Information Service.

The Division of Personnel also maintains an Affirmative Action Reference File containing the resumes of protected class individuals who have expressed an interest in working for the Depart-

ment. The Commissioner has directed that departmental appointing officers review this file when recruiting for Department professional and management openings where there is no existing Civil Service eligible list or for which no list is required (e.g., exempt and consultant positions). (See section on "Affirmative Action Reference File: on this page.)

Application Forms

The Affirmative Action Officer has reviewed all preemployment forms and removed all inappropriate inquiries. All references to protected class status have been removed as well as any illegal inquiries regarding disability, ethnicity, gender, marital status, national origin, age, credit rating, etc. Any appropriate changes pursuant to future legislation and/or executive mandate will be made as become necessary.

Surveys of Employees

A separate Affirmative Action Survey form is included in the preemployment process, which asks on a voluntary basis for individuals to reveal their ethnicity, gender, disability or Vietnam Era veterans' identities to the Affirmative Action Office. This information enables the Affirmative Action Officer to monitor applicant flow and to assure that the application process is carried out equitably. Completed forms are not kept in Personnel files but forwarded to the Affirmative Action Office, where they are kept in confidential files.

At other times during the year, the Affirmative Action Office or the Department of Civil Service's Division of Affirmative Careers, may distribute surveys requesting similar information. In all cases, responses should be given voluntarily and steps taken to assure confidentiality. Employees will not be punished for not responding. However, willingness to provide this information helps the Department to accurately monitor how effective its efforts are in preventing discrimination and in fostering equal opportunities.

On an annual basis, each employee is given a copy of his or her confidential affirmative action record, and has an opportunity to make corrections or changes.

Anyone having questions about the information collection process is welcome to call the Affirmative Action Office at (518) 474-1265.

Affirmative Action Reference File

Because of their key positions, members of the Executive Staff of the Department are primarily responsible for achieving the goals of the Department's Affirmative Action Program. Part of this responsibility involves recommending names of possible candidates for Department positions to be included in a "Reference File" maintained by the Division of Personnel and the Affirmative Action Office. All members of the Executive Staff are expected to provide names and, when possible, resumes of protected class candidates for Department positions (without reference necessarily to current vacancies) in any branch of the Department. These should be based on professional contacts and not merely word-of-mouth or off-hand recommendations of third parties.

Appointing officers are urged to review the file when considering appointments for which there is no list or for which no list is required, including appointments to consultant positions.

For competitive examinations the Division of Personnel routinely reviews the file and mails announcements to candidates who appear to meet the minimum qualifications.

The resumes are coded by specialty and are available for review in the Division of Personnel, Room 528, Education Building. Photocopies of applicants' resumes are provided after appointing officers determine which resumes will be considered. The total file will not be released from the Division of Personnel.

Advertising

The Department widely advertises its openings for positions, and most of its upper level professional and managerial positions are recruited for on a nationwide basis. In view of limited funds for advertising vacancies, however, it is necessary to apply very rigid cost-effectiveness measures to our expenditures for this purpose. Because we have achieved better affirmative action results from advertising in widely circulated publications and/or professional journals than from advertisements in publications catering to narrow interest groups, we prefer to utilize the former.

Generally speaking, advertisements are placed in selected newspapers and professional journals for positions at the Bureau Chief level and above, while general mailing campaigns are utilized for lower level positions. Managers who become aware of new sources should provide the Division of

Personnel and the Affirmative Action Office with names and addresses so they can be added to the mailing list. Good results have been obtained from advertising, including use of display ads, in the Sunday *New York Times* and other major metropolitan newspapers. It is our practice to label all such advertising with the phrase "Affirmative Action/Equal Opportunity Employer."

In order to assure that recruitment efforts attract qualified disabled individuals, advertising will be accessible to those who may have vision, communication or mobility disabilities. Wherever possible we will announce vacancies through the use of radio information services. Public service announcements will have signed inserts or captions, and notices will be posted in physically accessible locations.

The Division of Personnel and the Affirmative Action Office work closely with operating units in mapping out recruitment campaigns to meet staffing needs and in arranging with appointing officers appropriate affirmative action efforts. It is important that such campaigns and efforts be undertaken as soon as the decision is reached that the vacancy in question may be filled.

Search Committees

Whenever search committees are impanelled to assist with recruiting and selecting candidates, the committee will be selected to be representative of various protected classes. In providing guidance to the committee's purpose, the Department manager involved will apprise members of affirmative action policies and objectives.

Oral Test Rating Boards

Whenever possible, oral test rating boards convened by the Division of Personnel for the determination of eligible candidates for Department positions, include women, disabled persons, minority representatives, and Vietnam Era veterans. Managers assist this process by identifying potential board panelists among their employees and by referring their names to the Division of Personnel.

Unsolicited Applications and Resumes

When identifiable protected class representatives submit completed applications or resumes to Department Offices, the recipient will forward copies of the resume or application to the Division of Personnel and the Affirmative Action Office. If the recipient finds that the application or resume is relevant to a current or expected opening, the appropriate supervisor will be notified so that an interview of the candidate can be conducted. If the application or resume is not relevant to a current or expected opening, the candidate will be so informed. Copies of resumes and applications will be kept on file for at least six months in the event that openings occur. In either event, a memo to the Affirmative Action Office should explain what action was taken.

Employment Interviewing

The Department's Affirmative Action Policy necessitates that appointing officers be especially alert to the proper conduct of interviewing candidates for possible appointment to vacant positions. The following requirements and guidelines supplement Civil Service Law and Rules and departmental rules and procedures concerning the appointment process, most of which are outlined in the *Administrative Policy Handbook, On the Job* (the Department's personnel handbook for its staff), "Commissioner's Memorandums," and State-employee organization agreements. In addition, individual offices of the Department may have special requirements regarding which officials are required to conduct interviews and approve appointments.

In any case, appointing officials should be guided by the following points in the conduct of employment interviews.

I. Preparation

a. Review the applicant's resume or Application for Employment prior to the interview.

b. Know the requirements of the position.

c. Prepare an outline of the questions that need to be asked of the applicant to help gain insight about his or her qualifications, aptitudes and abilities. This helps ensure that standards for selection are consistent for all interviewees.

d. Remember the questions that may not be asked in the interview (see "Unlawful Preemployment Questions" below).

e. Arrange a time and place for the interview that is comfortable and will allow it to remain uninterrupted.

f. Interviews must be held in places that are accessible to disabled persons, and reasonable accommodations to do so must be made

if necessary. The Affirmative Action Office can be contacted for advice when difficulties arise.

II. Conducting the Interview

a. Establish and maintain a friendly, pleasant atmosphere.

b. Listen - really listen to the applicant.

c. Gain information through pertinent and appropriate questions.

1. Use your outline and the application to focus questions.
2. Ask for further clarification if information is not complete or is confusing on the application.
3. Don't assume you know what the applicant means. Ask follow-up questions: why, what, when, where, and how.
4. Avoid "yes/no" type questions.

d. If you are interested in the applicant, ask him or her for references, especially the names of former supervisors or employers.

e. Give the applicant information about the position you wish to fill.

1. Explain where the position is situated in the organization structure and to whom the incumbent reports.
2. Give a general description of working conditions with specific details about hours of work, overtime, travel (if any), production standards, etc.
3. Give an honest estimate about promotion or career opportunities.
4. Give the applicant an opportunity to ask questions.

III. Closing the Interview

a. Inform the applicant when he/she can expect to hear from you. (As a general rule, it is not advisable to make an immediate job offer unless you have made a prior reference check and/or you personally know the applicant and have made the decision that he or she is the best qualified.)

b. If it is obvious that the individual does not meet the requirements of the position, indicate this to the applicant and, if possible, suggest other types of positions that he/she might consider.

IV. Evaluation

a. Summarize your impressions of the applicant immediately following the interview for future references.

b. Make a reference check either by personally telephoning individuals submitted as references by the applicant or asking the Personnel Office to do so. (As a general rule, we do not recommend that written references, including college placement files, be relied upon.)

V. Unlawful Preemployment Inquiries

a. Birthplace of applicant.

b. Birthplace of applicant's parents, spouse or other relatives.

c. Applicant's religious affiliation, religious holidays observed or attendance at religious services.

d. Any questions directly or indirectly seeking indication of ethnicity or color, including complexion or color of skin.

e. Asking for a photograph of applicant.

f. Applicant's nationality, national origin, descent or parentage.

g. Marital status of applicant or information on spouse or other family members, including children.

h. Arrangements for child care.

i. Questions about physical or mental disabilities unless the Personnel Office has specifically authorized certain such questions in advance of interviews for a specific job-related function (e.g., physical ability to lift heavy objects required of a Laborer).

j. Arrest record.

As a general rule, you should ask the same questions of every applicant, making no distinctions in this regard because of age, gender, ethnicity, or disability.

Medical Examinations/Standards

In those limited instances where preemployment medical examinations are necessary to confirm the presence of bona fide occupational qualifications, the Personnel and Affirmative Action Offices shall ensure that preemployment medical examinations meet the following criteria:

- That a conditional offer of employment is made
- That all employees or prospective employees take such examinations
- That any information regarding disability is kept confidential.

Appointment Monitoring

Consistent with Department policy of giving deliberate consideration to protected class representatives without establishing quotas, departmental appointing officers are required to provide the Division of Personnel and the Affirmative Action Office with specific information concerning recruitment, placement and promotion activities for minority representatives, women, Vietnam Era veterans, and people having disabilities. For more information on appointment monitoring see the Department's Recruitment and Selection Procedures outlined in the *Administrative Policy Handbook*.

Competitive Appointments

In the case of appointments from Civil Service eligible lists to either permanent or temporary openings, the Division of Personnel and the Affirmative Action Office expect an explanation whenever an eligible minority is passed over or whenever an eligible who is a woman is passed over to appoint a man. The same requirement will be imposed for an eligible who is a Vietnam Era veteran or who is disabled and passed over if the Department is aware of the existence of veteran status or the disability. "Passed over" means not selecting a protected class eligible who is among the top three candidates on a list of those interested in appointment. Such explanation should indicate the strengths and weaknesses of all the available candidates reachable for appointment. These explanations will be kept confidential in the Division of Personnel and in the Affirmative Action Office. The lack of a satisfactory explanation can result in a disapproval of the recommended appointment.

Enforcement of this requirement is a shared responsibility of departmental appointing officials and the Division of Personnel. When lists are certified by the Division of Personnel to appointing officials, staff involved in this process are frequently unaware of the racial makeup of the eligibles or whether some of the eligibles may be disabled. Sometimes it is not even possible to discern the gender of an eligible solely from the person's name on the eligible list. Thus, this information becomes known in most cases during the interview process. If an appointing official believes the appointment of the best qualified candidate requires that a known protected class candidate must be passed over, the official should be able to justify such a recommendation on the basis of the job requirements and the relative skills and backgrounds of the eligible candidates. This justification should be immediately submitted to the Division of Personnel and the Affirmative Action Office before the appointment is confirmed with the candidate of choice.

Other Appointments

In the case of all other appointments where a Civil Service eligible list is *not* required (e.g., short-term temporary appointments, noncompetitive or labor class appointments, provisional appointments necessitated by exhausted eligible lists, n.s. appointments, etc.) appointing officers must be able to demonstrate that a significant effort was made to attract protected class candidates. Appointing officers are encouraged to review the "Affirmative Action Reference File" in this regard, and to develop recruitment sources from among organizations representing protected classes.

To select the final candidate, the procedures for Recruitment and Selection outlined in the Personnel Section of the *Administrative Policy Handbook* must be followed. Documentation sent to the Division of Personnel and to the Affirmative Action Office for approval should include:

1. A description of the efforts made to attract protected class candidates
2. A list of all eligibles, identifying on this list known protected class candidates
3. A justification for the selection of a finalist who is not a protected class representative, through comparison of the finalist's relative skills and background with the job requirements as well as with the skills and backgrounds of known protected class eligibles who were not selected.

This justification should be immediately submitted before the appointment is confirmed with the candidate of choice. The lack of a satisfactory explanation can result in disapproval of the recommended appointment.

Separations: Transfers, Terminations, Resignations, and Layoffs

Personnel actions resulting in protected class employees leaving the Department will be reviewed by the Affirmative Action Office before becoming final.

When such actions involve known disabled employees, the Affirmative Action Officer will investigate the situation as soon as possible to

ascertain that such separation is not attributable to the failure or unwillingness to provide reasonable accommodations.

Whenever protected class individuals are faced with possible layoffs, the Personnel and/or the Administrative Office will work, in conjunction with the Affirmative Action Office, to develop the agency reduction-in-force plan and recommend actions to aid in the retention of protected class employees. The Education Department will utilize 55.b and 55.c appointments when possible to maintain continuity of employment for known disabled employees.

Exit Audits and Interviews

The Affirmative Action and Personnel Offices will conduct an exit audit whenever any protected class member leaves the agency. An exit interview will be conducted when one or more of the following conditions prevail:

- Whenever a separation involves a known disabled employee (in such a case, accommodations required and provided to the employee must be evaluated) and/or
- Whenever the result of an exit audit indicates that an affirmative action problem may exist.

Demotion and Disciplinary Actions

The Personnel or Employee Relations Office will inform the Affirmative Action Office of situations where demotions or disciplinary actions are being considered against protected class members. The Affirmative Action Officer will review and thoroughly investigate all such notices. For disabled employees, accommodations required and provided will be carefully analyzed in the review.

Counseling

Protected class employees having difficulty in job performance will be afforded the opportunity to be counseled prior to any unfavorable employment action being taken.

Supervisors/managers will contact the Division of Personnel or the Affirmative Action Officer to assist in the provision of such counseling.

Career Development

Protected class employees will be encouraged and given every opportunity to participate in training and career mobility opportunities.

The Human Resource Planning and Development and Affirmative Action Offices will work together:

- to ensure that no protected class member is denied participation based on his/her protected class status or need for reasonable accommodations
- to make training sites and programs accessible in accordance with Section 504 of the Rehabilitation Act
- to make all supervisors aware of their responsibility to fairly nominate employees for training
- to make protected class employees aware of training opportunities available
- to develop procedures that will monitor training participation and nomination for equity.

On The Job, the Education Department's handbook on personnel policies and regulations, summarizes employee training policies and opportunities. All employees, clerical as well as professional and managerial, are encouraged to participate. Human Resource Planning and Development staff can provide guidance on course selection and available funding.

One important factor contributing to employee advancement is the receipt of special project or task force chairing assignments which arise as part of any operating unit's normal routine. Special assignments such as these give a designee the opportunity to develop leadership and organizational skills, to learn how other areas of the Department function, and to find ways of coping with the pressures of meeting deadlines which are solely the designee's responsibility. Such opportunities collectively comprise an informal management development "program." When internal job advancement opportunities arise, the individuals selected are typically those who have most often come through in times of need. In order to enhance the upward mobility of protected class employees, therefore, managers who control special project and committee chair assignments will regularly designate protected class employees for such assignments. Reports of such mentoring activities will be included in the quarterly affirmative action report.

Employees who have disabilities requiring reasonable accommodations in training or career development activities should bring their needs to the attention of their supervisors or the training program staff as much ahead of time as possible, so that accommodations can be planned for. All training announcements include an invitation to people who need accommodations to make their needs known to the Human Resource Planning and Development Office. Individuals will not be denied

the opportunity to participate because of their need for reasonable accommodations.

Leave Policies

Leave policies including education leave, sick leave, special leaves with pay, parenting leaves, and leaves without pay are discussed in detail in the Department's handbook on personnel policies and regulations, entitled, *On The Job*. It is the policy of the Education Department to treat all requests for leave in an objective and nondiscriminatory manner.

Performance Evaluations (see also Part VI)

The Personnel and Affirmative Action Officers will ensure that supervisors conducting performance evaluations are briefed on how to evaluate the work performance of all employees in an objective, nondiscriminatory manner.

Supervisors and managers will be advised that Affirmative Action compliance will be included as a criterion in their performance appraisals. A review of performance evaluation results will be conducted to determine their objectivity, fairness and effectiveness.

Factors utilized in this review include, but are not limited to, the following:

- dispersion of protected class employees' ratings in relation to the work force demographics
- number of protected class employees making rating decisions
- number of appeals upheld/denied and demographics of the same
- trends in ratings of protected class employees in comparison to nonprotected class employees.

Quality of Work Life

The Department will explore the ways in which Department and statewide policies designed to improve the quality of work life are connected to affirmative action efforts. Some areas for exploration include:

- sexual harassment policies (see Executive Order 19)
- sexual preference issues (see Executive Order 28)
- flexible and part-time work opportunities (see Executive Order 68)
- Employee Assistance Programs.

Equal Opportunity/Affirmative Action Policies in Areas Other Than Employment

The Department will study equal opportunity/-affirmative action policies not directly related to employment to determine how they intersect with and affect the implementation of this Affirmative Action Plan. This study will include the following:

- mandates for increased utilization of Minority and Women Owned Business Enterprises in agency contracts (see Executive Order 21)
- requirements of Federal agencies and other funding sources
- requirements affecting private sector, educational or other governmental institutions
- policies concerning equal opportunity/affirmative action in provision of services to the public and/or client populations
- policies affecting relationships with community-based organizations and other groups representing the interests of protected class members.

Informal Policies and Practices

The Education Department recognizes that informal policies and practices are not part of its official decision-making structure; however, informal policies often determine how formal rules are implemented.

While it is difficult to identify and correct these informal procedures, it is imperative that their existence be acknowledged and considered in the Affirmative Action Plan. All employees in the Education Department have a responsibility to examine any informal procedure in which they participate, for example:

- In the face of a viable recruitment plan, are vacancies still filled via word of mouth?
- Do managers/supervisors pass over protected class employees to select employees with whom they personally identify for promotion opportunities or special career enhancing training or assignments?
- Are small numbers of protected class individuals hired to fill highly visible positions which lack organizational credibility?
- Do interviewers informally discourage potential protected class eligibles when attempting to reach a "favorite son"?

PART V

Vietnam Era Veterans

A. Policy Statement

Vietnam Era veterans are a protected class and are due the same considerations as the other protected classes under the Education Department's Affirmative Action Program. Therefore, all the policies and procedures outlined in this plan apply to Vietnam Era veterans as well as to the other protected classes.

This Department will take affirmative action to employ and advance in employment Vietnam Era veterans. Such action applies to employment practices including, but not limited to, the following:

Hiring, promotion, demotion, transfer, recruitment or recruitment advertising, rates of pay or other forms of compensation, as well as selection for training.

The Department will comply with the Department of Civil Service requirements for the collection and maintenance of information on all employees who meet the definition of Vietnam Era veterans.

Efforts will be made to assure that Vietnam Era veterans will be represented on all committees which deal with employment practices and policies; e.g., Affirmative Action Advisory Committee, search/selection committees, grievance and appeal committees.

B. Definition

For the purpose of compliance with this policy, a Vietnam Era Veteran is considered to be:

> *Any person who served in full-time active services other than active duty for training purposes, in the Armed Forces of the U.S., any part of which occurred between January 1, 1963 and May 7, 1975 and was discharged or released with other than dishonorable discharge.*

C. Recruitment Sources

The Department will seek to recruit Vietnam Era veterans from organizations, institutions and agencies such as those listed:

- The Veterans Employment Representative or designee in the Job Service Office nearest to the facility or office where hiring takes place
- The Veterans Administration Regional Office nearest to the office or facility
- The Office of the Division of Veterans' Affairs nearest each establishment where hiring takes place
- The service officers of the national veterans groups active in the areas where recruitment is taking place
- Local veterans groups and veterans service centers in the areas servicing each establishment.

D. Referral to Services

The agency shall refer Vietnam Era veterans to appropriate social and human services organizations, institutions, and agencies as needed.

Part VI

Persons with Disabilities

Policy Statement

The State Education Department will take affirmative action to employ and advance in employment qualified individuals with disabilities. Such action applies to employment practices including but not limited to the following:

Hiring, promotion, demotion, transfer, recruitment or recruitment advertising, rates of pay or other forms of compensation, as well as selection for training.

While applicants and employees who have disabilities are one of the protected classes included under the provisions of the main body of this Affirmative Action Plan, this section addresses additional concerns unique to the affirmative action efforts for people who have disabilities.

The State Education Department's Affirmative Action Office will be pleased to assist covered applicants or employees or any managers who need advice regarding the specific ways that the Affirmative Action Plan affects persons with disabilities. If there are questions regarding the policy on employment of individuals with disabilities, contact the Affirmative Action Officer in Albany at (518) 474-1265.

Who is Covered Generally?

For purposes of coverage under this Affirmative Action Plan an individual with a disability is someone who: (a) has a physical or mental impairment which substantially limits one or more major life activities, (b) has a record of such impairment, or (c) is regarded as having such an impairment. The term "substantially limits" means the degree to which the impairment affects employability. An individual with a disability who is likely to experience difficulty in securing, retaining, or advancing in employment will be considered substantially limited. This Affirmative Action Plan is focused on those people who are qualified persons with disabilities, i.e., those who with or without reasonable accommodations, can perform the essential functions of the job in question.

Identification of Covered Individuals

To identify Department employees and applicants who might qualify for assistance, the Department annually requests employees to identify themselves as having disabilities consistent with the definition above. As new appointments are made during the year, the appointees are also asked to indicate whether they have disabilities.

Under all circumstances self-identification is to be made voluntarily. Any information regarding individuals' disabilities will be kept in confidential files in the Affirmative Action Office. These files are separate from personnel files.

With the consent of the employee, disclosure may be made to supervisors and managers if reasonable accommodations or work restrictions are needed, to first aid and safety personnel if the conditions require emergency treatment, or to monitoring or investigatory authorities. The employee or applicant may see his or her own file. Anyone whose responsibilities require knowledge of the employee's disability will also treat such knowledge with confidentiality.

Federal Laws Related to Individuals with Disabilities

SECTION 504 COMPLIANCE:

Compliance with the requirements of Section 504 of the Federal Rehabilitation Act of 1973, as amended, is an integral part of our agency affirmative action efforts. The provisions of Section 504 require that the State Education Department, as a Federal funding recipient, may not discriminate in

its employment practices nor in its delivery of programs and services, against qualified individuals with disabilities.

Pursuant to the regulations, our 504 Self-Evaluation and Transition Plan was completed in June 1978 and filed with New York State Division of the Budget. Since responsibility within New York State was transferred from the Division of the Budget to the Office of Advocate for the Disabled, a copy of this plan was refiled with the Advocate's Office in July 1982.

The Affirmative Action Officer coordinates 504 Compliance for this Department. Anyone having questions or concerns relating to this issue should call (518) 474-1265 or write the Affirmative Action Officer at the Education Building, Room 152, Albany, New York 12234.

AMERICANS WITH DISABILITIES ACT (ADA):

Introduction

The Americans with Disabilities Act (ADA) of 1990 (Public Law 101-336) was signed into law on July 20, 1990. Since 1973, Federal agencies and recipients of Federal funds have been prohibited from discriminating on the basis of disability in services and employment by sections 501, 503, and 504 of the Rehabilitation Act. The central purpose of the Americans with Disabilities Act is to extend civil rights protection for individuals with disabilities to the private sector.

Based on the concepts in the Rehabilitation Act of 1973, the ADA provides civil rights similar in effect to those based on race, religion, national origin, age and gender found in other civil rights statutes. In addition to the areas of employment and public accommodations, the ADA prohibits discrimination based on disability in the areas of public transportation, services, and telecommunication for those with hearing impairments.

The purpose of the Act is to:

- provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
- provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
- ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and
- invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

Provisions

The following summarizes the findings of Congress related to this Act, key provisions and their impact on New York State.

Findings of Congress

In the ADA, Congress found that:

- Some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;
- Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
- Discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
- Unlike individuals who have experienced discrimination on the basis of race, color, gender, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;
- Individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;
- Census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior sta-

tus in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

- Individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;
- The Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and
- The continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

Definitions of Terms Used in the Act

Individual with a disability: Throughout ADA the definition of "individual with a disability" is consistent with that currently utilized under Section 504 of the Rehabilitation Act of 1973, as amended, and the New York State Human Rights Law. The definition of a "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. People with AIDS and alcoholics and drug abusers who have undergone treatment are covered.

Auxiliary aids and services: The term "auxiliary aids and services" includes: qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; acquisition or modification of equipment or devices; and other similar services and actions.

State: The term "State" means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Employer: The term "employer" means, initially, a person engaged in an industry affecting commerce who has 25 or more employees. After two years, ADA will affect employers of 15 or more employees. The term "employer" *does not* include the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or a bona fide private membership club (other than a labor organization) that is exempt under the Internal Revenue Code.

Reasonable accommodation: The term "reasonable accommodation" may include: making existing facilities used by employees readily accessible to and usable by individuals with disabilities; job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

Undue hardship: The term "undue hardship" means an action requiring significant difficulty or expenses, when considered in light of the factors listed below:

- the nature and cost of the accommodation needed under this Act;
- the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
- the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

Key Provisions

Following is a brief description of the key provisions of ADA and their impact on New York State.

Employment

(Title 1 - effective 2 years after enactment)

ADA prohibits discrimination on the basis of disability in employment, including selection criteria, preemployment medical examinations, benefits and opportunities advancement. The major change which ADA will effect will be to clarify the obligation of the employer to make "reasonable accommodations" for qualified employees with disabilities. Employers are required to provide reasonable accommodations (e.g., making facilities accessible, acquisition or modification of equipment, etc.) to qualified employees with disabilities, except in situations where the provisions of such an accommodation would impose an "undue hardship."

While the Human Rights Law provisions of the New York State Executive Law already prohibit discrimination on the basis of disability by employers of four or more, revisions of State law, especially with regard to reasonable accommodations would be desirable to assure employers that compliance with State law would meet applicable requirements of the ADA.

Public Services

(Title II - effective 18 months after enactment, except for provisions regarding public transportation)

Under Title II, all activities conducted by state and local governments must assure nondiscrimination against people with disabilities. To make such assurances, state and local governments could be required to remove architectural, communication and transportation barriers and provide auxiliary aids and services to qualified people with disabilities. While the State Human Rights Law already prohibits discrimination in most such areas, ADA will probably require governments to make greater affirmative steps (e.g., barrier removal, provision of auxiliary aids and services) than are currently required to assure nondiscrimination. Architectural accessibility in new construction and renovation projects is already required by the New York State Uniform Fire Prevention and Building Code, but retrofitting is not currently mandated.

Special requirements are included for public transportation services. New, and to the extent possible, used buses, rail and other fixed route vehicles purchased at least 30 days after enactment must be accessible; paratransit services must be provided where fixed route transportation is provided within 18 months of enactment; new facilities and alterations to existing facilities must provide accessibility. Key stations in intercity rail service must be accessible within 20 years. Key stations in rapid rail, commuter rail and light rail systems must be accessible within 3 years, except that the limit may be extended to 30 years (20 for commuter rail) where extraordinary changes are necessary. Intercity light rail and rapid and commuter rail systems must have one car per train accessible within five years.

In New York, the 1990 Governor's Program Bill on accessible public transportation has been enacted as Chapter 61, Laws of 1990. The bill requires all new buses purchased by nine major transit providers to be lift-equipped and requires that paratransit services be made available in the same communities. Specific requirements applicable to public transportation in New York City were adopted in 1984. ADA will extend these requirements to 35 additional communities. As under Title I, extension of State law to correspond to Federal requirements would be desirable.

Public Accommodations

(Title III - effective 18 months after final regulations are issued, but not later than 24 months after enactment, except with regard to transportation services)

This Title prohibits discrimination in establishments and services which are privately operated but open to the public. Requirements are similar to those applicable to "public services" under Title II. Transportation services operated by non-governmental entities are included. Requirements that new vehicles used to provide public transportation services (except automobiles and over-the-road buses, e.g., Greyhound) be accessible are applicable 30 days after enactment, with accessibility requirements applicable to over-the-road buses purchased within 6 (generally) or 7 (small providers) years after enactment. New and renovated facilities must be accessible and barrier removal must be undertaken where "readily achievable."

The State Human Rights Law currently prohibits discrimination in places of public accommodation. There are certain exceptions to the State law (e.g., schools) which are covered under ADA and ADA would define the failure to take certain

action — barrier removal, provision of auxiliary aids — not currently required under State law, as discriminatory practices. Architectural accessibility requirements for new construction and substantial renovation are already incorporated in the State Building Code. Retrofitting, however, is not currently required. State accessible transportation requirements are discussed under Title II.

As with Titles I and II, amendments conforming State law to the scope of Federal law would be desirable.

Telecommunications

(Title IV - system operant within 3 years of enactment)

Title IV requires that common carriers offering telephone service provide telecommunication interstate and intrastate relay services for people who are hearing or speech impaired within 3 years of enactment. The Federal Communications Commission (FCC) may certify an intrastate relay system as meeting the requirements of the ADA for intrastate service.

In New York, an intrastate relay system is currently operated by ATT. Interstate service has not been undertaken to date because no mechanism currently exists for recovery of costs on interstate relay service.

Enforcement

Enforcement proceedings and remedies are generally those available under the Civil Rights Act of 1964 (injunctions, back pay). The Civil Rights Restoration Act of 1990 may also allow for compensatory and punitive damages.

Recruitment

The Department has historically made a commitment to recruiting, hiring and promoting individuals with disabilities. The Department also recognizes the need to recruit qualified individuals with disabilities for supervisory or management positions within the State Education Department. Recruitment sources include agencies serving individuals with disabilities and organizations comprised of individuals who have various disabilities. The Affirmative Action Officer will work closely with the Department of Civil Service as well as offices within the Department to identify qualified individuals with disabilities to apply for vacancies.

Reasonable Accommodations

When a qualified applicant requires some accommodations to perform the essential functions of the job, such accommodations will be provided within reason. These accommodations should be determined jointly by the applicant and the manager. A qualified candidate will not be rejected for appointment solely because some reasonable accommodation needs to be made. If an applicant or employee cannot perform the job duties required even with accommodation, the agency is not required to employ the individual in that assignment.

Reasonable accommodations might include, but are not limited to:

- alternative work schedules;
- rearrangement of office furniture; and/or
- provision of adaptive equipment such as a telephone amplifier, assistive listening devices or enlarging device, reader or sign language assistance, special parking, and other architectural modifications.

The Department is committed to ensuring that a safe and comfortable work environment is provided for all employees, including those employees with disabilities. Physical accessibility to the job site and exit from the site in an emergency is critical for such employees. Issues of architectural accommodations can best be dealt with if original site locations take this into account. Therefore, whenever offices are moved or newly opened, the Affirmative Action Officer should be asked by the Division of Education Business Management Services for input on physical accessibility.

Reasonable accommodations may need to be provided by managers to new employees as well as to employees already on staff. Reasonable accommodations may be needed to assist with normal work routines, in-service training, staff meetings, supervision meetings, reassignments, transfers, promotions and in other employment activities.

Assuring reasonable accommodations is a shared responsibility. It is important for employees who require some type of reasonable accommodations to make sure that new managers know what accommodations have been provided in the past, with enough advance notice so that they can continue to be provided.

Purchase of Specialized Furniture and/or Equipment for Employees

Some employees with disabilities may require specialized furniture and/or equipment. A policy statement relative to the purchase of specialized furniture and/or equipment for employees was approved by the Commissioner in January 1988. In that policy statement the Department recognized that a number of its employees may have physical conditions which may adversely affect their job performance. The Department also recognized that if a specially designed piece of furniture and/or equipment was provided to these employees, they might be able to perform their duties in a more productive and comfortable manner. It is the policy of the Department to provide its employees with specialized furniture and/or equipment they need to perform the responsibilities of their positions.

Employees who can provide appropriate medical documentation indicating they need specific furniture and/or equipment and are willing, if necessary, to undergo a medical evaluation, will be provided the required furniture and/or equipment.

Any employee who believes he or she has a physically limiting condition, which necessitates specially designed equipment and/or furniture, should forward a written request for such to the Director of Personnel with the following information:

1) a specific diagnosis in writing from a licensed physician describing the physical condition, prognosis and limiting conditions;
2) a specific recommendation from the physician as to the type of equipment or furniture that is needed by the employee to perform his or her job;
3) if available, the name of the manufacturer, model number, style, description of the product, and list price; and
4) a recommendation from the employee of at least one vendor (two or more, if possible) where the item can be obtained.

Once this information is obtained, it will be reviewed by a committee comprising the Director of Personnel, the Director of Education Business Management Services and the Affirmative Action Officer. During the evaluation process, the committee may request additional information either on the equipment and/or furniture to be obtained or the specific medical condition. After the committee has reviewed all the information, a decision will be made relative to the equipment and/or furniture to be purchased. Funding for such furniture and/or equipment will be identified by the Bureau of Budget Coordination.

Copies of the policy have been distributed throughout the Department and training for supervisors on implementing the policy will be provided upon request.

Performance Evaluations

During the development of performance tasks and standards, supervisors should discuss with employees with disabilities the need for reasonable accommodations. It is important to discuss the need for such accommodations during each evaluation period since the need for such accommodations may change due to the status of the worker's disability or other factors.

Supervisors who conduct performance evaluations need to properly evaluate the work performance of workers who have disabilities, in order to avoid situations such as the following: a) giving the impression that the disability is the reason for discipline or discharge of the employee when the real issue is poor work performance; b) criticizing the individual for poor work performance when the absence of a workable reasonable accommodation is a contributing factor, and c) expecting less of an individual having a disability than is expected of other workers with equal titles while overrating the employee's performance.

Retention of Workers Who Become Disabled

The Department will make every effort to retain employees who acquire disabilities while in service of the Education Department. If consideration is being given to terminating a person for reason of a disability, the Affirmative Action Officer and the Personnel Office must be informed. Every alternative will be examined before the employee leaves service. Given enough notice, it may be possible to provide support services, informational counseling, referral to needed resources, transfer or reassignment, or it may be possible to obtain coverage under Section 55-b or c of Civil Service Law. Consideration should be given to training for those employees who acquire disabilities, if such training would permit retention.

Complaint Procedure

Applicants and employees with disabilities can utilize the complaint procedures described elsewhere in the plan for protected classes. (See Chapter VII "Discrimination Complaint Procedures"). The Affirmative Action Officer plays a key role in this issue and should be contacted if any questions arise.

PART VIa

Sexual Harassment Policy

Sexual harassment in the workplace is not merely an offensive condition; it is against the law. Like harassment on the basis of color, gender, religion, age, national origin or disability, sexual harassment is discrimination. Discrimination on the basis of gender is a violation of both Title VII of the Civil Rights Act of 1964 and the New York State Human Rights Law.

Effective November 10, 1980, The Equal Employment Opportunity Commission issued guidelines designed to eliminate instances of sexual harassment in the workplace. In accordance with these guidelines, unwelcome sexual advances, requests for sexual advances, requests for favors or other verbal or physical conduct of a sexual nature will constitute sexual harassment when:

1. Submission to the conduct is either an explicit or implicit term or condition of employment; or
2. Submission to or rejection of the conduct is used as a basis for an employment decision affecting the person rejecting or submitting to the conduct; or
3. The conduct has the purpose or effect of unreasonably interfering with an affected person's work performance, or creating an intimidating, hostile, or offensive work environment.

Every State Education Department employee is entitled to a working environment free from sexual harassment. It has no place in the workplace. Ignoring the problem is tolerating the problem, and the State is determined that harassment of any sort will not be tolerated. Sexual harassment is considered to be a form of misconduct, and sanctions will be enforced against supervisory and managerial personnel who knowingly allow such behavior to exist in the workplace as well as against those persons guilty of such misbehavior.

Complaints of sexual harassment may be made orally or in writing to:

Affirmative Action Officer
Education Building, Room 152 EB
Albany, New York 12234
Phone (518) 474-1265

The Affirmative Action Office is responsible for processing complaints. Confidential investigations will be conducted and complainants will be informed of various administrative and legal remedies. The complaint process provides for follow-up to determine if the sexual harassment has been effectively stopped.

PART VII

Discrimination Complaint Procedure

I. Introduction

Equality of opportunity is a civil right in the State of New York under the provision of Article 15 of the New York State Human Rights Law. Every employee and applicant for employment has the right to seek employment opportunities in a climate that is free from restraint and intimidation, harassment, coercement, or exclusion. Pursuant to the promulgation of the Planning Guidelines to achieve Equal Opportunity in New York State through Affirmative Action under Executive Order 6, this complaint procedure has been devised to provide for uniformity and equity in the resolution of allegations of discrimination in employment.

An abbreviated version of this procedure appears in the *Administrative Policy Handbook* of the New York State Education Department and *On the Job*, the personnel policies handbook for the New York State Education Department.

II. Purpose

This procedure has been designed for the resolution of complaints internally. It is in no way intended to duplicate or circumvent options available to claimants through:

1. Employee organizations
2. The New York State Division of Human Rights
3. The Equal Employment Opportunity Commission
4. The U.S. Justice Department Office of Civil Rights
5. Any other regulating agencies as may be appropriate
6. The judicial system.

Use of this procedure will not suspend any statute of limitations otherwise set by law, rule or regulation. This procedure applies to all complaints of discrimination in employment based on color, race, national origin, creed, age, gender, marital status, religion, mental or physical disabilities, arrest record, criminal conviction, or veteran status.

It may be used by any employee or applicant for employment. Complaints may be based on any alleged act or omission in the nature of discrimination including, but not limited to:

Interviewing, hiring, dismissal, discipline, performance evaluation, job assignment, training opportunities, shift assignment, promotion, transfer, working condition, harassment (color, gender, race, national origin, etc.), agency policies, and other terms or conditions of employment. Each employee may be represented by an agent of his/her employee organization, in the event that the complaint involves a possible violation of contract.

In the event that complaints are filed directly with the Division of Human Rights, the Equal Employment Opportunity Commission or other regulartory agencies, the Office of Counsel will coordinate the Department's response. This may include asking the Affirmative Action Officer to attempt resolution through departmental procedures.

Human Rights Complaints

If a Department office or individual receives a human rights complaint from a Federal, State or local human rights agency, the complaint should be transmitted immediately to the Office of Counsel, Room 116, EB. The complaint will be assigned to an attorney, who will prepare the answer to the complaint in consultation with appropriate Department personnel.

III. Definitions

Discrimination

Unlawful consideration or treatment of a person or group, (either intentional or unintentional)

based on color, race, creed, national origin, age, gender, marital status, religion, mental or physical disabilities, arrest record, criminal conviction, or veteran status.

Discrimination in Employment

1. Where the failure or refusal to hire, promote or train any qualified individual or otherwise treat equally with respect to compensation, terms and conditions or privileges of employment would not have occurred but for color, race, creed, national origin, gender, sexual orientation, religion, marital status, age, disability, veteran status, criminal conviction, or arrest record.
2. To limit, segregate or classify employees in such a way as to deprive or tend to deprive an otherwise qualified individual of employment opportunities solely on the basis of a person's color, race, creed, national origin, gender, sexual orientation, religion, marital status, age, disability, veterans status, criminal conviction, or arrest record.

IV. Responsibility

a) Commissioner of Education

The Commissioner of Education has the responsibility for the adoption and implementation of this complaint procedure and for assuring that sufficient staff is assigned and trained to properly carry it out. In the event that it is determined that a person has been subjected to an unlawful act of discrimination, the Commissioner shall issue instructions for remedial action including disciplinary action where appropriate.

b) Affirmative Action Officer

The Affirmative Action Officer is responsible for coordinating complaint proceedings. This may include counseling complainants, performing or delegating investigations and informing complainants of their right to file complaints with other entities.

c) Designees

In order to expedite the prompt investigation of complaints, the responsibility for complaint handling activities may be delegated to a person or persons in the same geographical region as the claimant. The delegated activities may include counseling, conciliation and investigation. Staff will be trained to conduct confidential investigations. To assure that equity and consistency prevail, the Affirmative Action Officer will direct the investigation and must be consulted before any conciliation or remedy is made final.

V. Discrimination Complaint Procedure

A. *The Process*

a) Any person with a complaint of discrimination should contact the Affirmative Action Officer or the appropriate designee within 60 working days of the occurrence of the event which has given rise to the complaint. If the 60 working day filing deadline is missed because of circumstances beyond the complainant's control, an extension of up to one year can be granted by the Affirmative Action Officer as deemed reasonable.

b) The Affirmative Action Officer or designee will advise the complainant, counsel if necessary, explain the internal procedure, explain the other options available to the employee and assist in completing a complaint form. (Discrimination complaint procedure forms appear in the appendix of the Affirmative Action Plan.)

c) The Affirmative Action Officer or designee will interview the complainant and study relevant documents.

d) The Affirmative Action Officer or designee will interview witnesses and further investigate the situation. At each opportunity, the Affirmative Action Officer will seek conciliation or informal settlement that is satisfactory to the parties concerned. The Affirmative Action Officer is responsible for investigating the feasibility and legality of any remedies that are proposed with the agency counsel, employee relations officer and the personnel officer as it appears necessary.

e) When the investigation is completed, the Affirmative Action Officer prepares a report including recommendation to the Commissioner of Education.

f) The Commissioner of Education issues the final decision and recommendations to the parties concerned.

g) The decision of the Commissioner of Education is the final level of departmental review.

The complainant may at any point in the process withdraw the charge using a withdrawal form available in the Affirmative Action Office.

B. Time Frames

In most cases, as explained in A a) above, the complainant should notify the Affirmative Action Officer or the appropriate designee within 60 days of the occurrence of the problem situation. The Education Department has 60 working days to reach a decision beginning from the date on which a written complaint is received.

C. Confidentiality

With the exception of giving evidence and answering inquiries during the investigation, the substance of the investigation will remain confidential. No party, staff member or designated agent shall disclose the results of an investigation or any parts thereof.

D. Accessibility

Assistance will be available to complainants who need assistance in order to understand and participate in the complaint process. This may include sign language interpreters, wheelchair attendants, braille copiers, sound amplification equipment or foreign language interpreters.

E. Retaliation

Employees who avail themselves of this procedure may do so without fear of retaliation. It should be clear that retaliation against an individual who has filed a discrimination complaint will result in disciplinary action.

F. Time Accruals

There will be no charge to leave accruals of those employees who take a reasonable amount of time in conjunction with complaint investigations. A reasonable amount of time has been established and accepted as the minimum amount of time required to conduct such consultations which would include the conveyance of the issues at hand as well as any ancillary concerns relative to the complaint and its review.

G. Outcomes

The outcome of an investigation is either a dismissal of the claim or remedial action. In the event of dismissal, the Department of Civil Service will be notified of the outcome through the quarterly report process. However, if remedial action is in order, any of the following avenues may be pursued consistent with the Civil Service Laws, Rules and Regulations:

1. Placing a person in a position that the individual would have been entitled to had the discriminatory practice not occurred;
2. Promoting a person who was refused advancement because of a discriminatory circumstance;
3. Hiring a person who was refused employment because of a discriminatory circumstance; or
4. Disciplinary action against a respondent in accordance with the appropriate employment agreement or regulations.

When removing or correcting a condition found to be a continuing cause of discriminatory action does not involve the application of the Civil Service Law, such action may be taken consistent with law or any controlling negotiating agreement. This is not an exhaustive list of possible remedies; each case will be judged on its own merit.

Individuals appointed as a result of discriminatory practice will not be penalized.

H. Follow-Up

The Affirmative Action Officer will maintain a file of complaints received. Six weeks from the date of the decision, the Affirmative Action Officer will determine whether the Commissioner of Education's directives have been carried out, whether employees are in a good environment or whether the case needs to be reopened. The findings will be reported to the Commissioner of Education.

I. Record Keeping

A record of the status and determination of all complaints will be maintained for at least two years. Cases that are unresolved are subject to external reviews and will be maintained indefinitely or until they are resolved. Records of complaints will be kept exclusively in either the Affirmative Action Office or the Office of Counsel.

J. Forms related to the discrimination complaint procedure are available in the Affirmative Action Office.

PART VIII

Equal Opportunity / Affirmative Action Training

In order for our affirmative action program to be most successful, a climate of cooperation and awareness must exist at all levels. Managers and supervisors need the skills to develop and manage a widely representative, productive work force. All employees need to be informed of their rights and responsibilities under Affirmative Action/Equal Opportunity mandates. The Commissioner has directed that training in affirmative action/equal opportunity concepts and topics be an integral component of this Department's employee training and development program.

The objectives are to reach all employees and to accomplish the following:

- Expand knowledge of the affirmative action/equal opportunity legal process as it applies to the work environment
- Increase employee understanding of the need for affirmative action
- Increase employee support for affirmative action plan implementation in the Department
- Increase interpersonal acceptance and sensitivity toward affirmative action issues as they apply to the workplace.

By using various approaches, we strive to ultimately provide each employee with basic training in the following topics:

- Historical and legal background
- Affirmative action issues and concepts
- Terms of the Department's plan
- Strategies for implementation, including how to overcome major obstacles
- Awareness of attitudes and values and how these affect understanding of affirmative action/equal opportunity expectations
- The individual employee's responsibility for affirmative action/equal opportunity.

Orientation of New Employees

Orientation sessions for new Department employees include an introduction to affirmative action concepts, specifically the terms of our Department's Affirmative Action Plan. In field offices, each manager charged with orienting new employees has the responsibility to assure that each new employee has received a copy of the plan and understands his or her rights and responsibilities under it.

The "Orientation for New Managers" program includes a briefing on manager responsibilities under the Department's Affirmative Action Plan. In addition, in order to successfully complete probation, newly appointed or promoted managers (at MI level and above) must demonstrate rudimentary knowledge of EEO law and related personnel issues, as assessed either by the computerized self-test in EEO available through the Human Resource Planning and Development Office or by an equivalent assessment approved by the Affirmative Action Office.

Probationary managers will be provided every opportunity to read and study relevant material available in the Human Resource Planning and Development Office or in the Affirmative Action Office. On successfully demonstrating knowledge of EEO law and related personnel issues, the probationer will be given a certificate to attach to the next probation report to attest to completion of this criterion.

Continuous Training Program

The Affirmative Action Office and the Department's Human Resource Planning and Development Office have a leadership role in annually producing at least one Department-wide training presentation on affirmative action/equal opportunity issues, such as those listed under "Priorities" below. Attendees will be invited from each of the seven areas of the

Department on the basis of membership in the target staff groupings listed on this page.

Additionally, on an annual basis, the Deputy Commissioner in each of the seven major areas of the Department will produce at least one internal presentation for his or her respective area. The topic for an area should be selected on the basis of affirmative action/equal employment issues which are of priority concern to that area. Examples might include service access issues, sexual harassment, management strategies, and so on.

In order to coordinate efforts, the content should be developed in conjunction with the Affirmative Action Office and the Department's Human Resource Planning and Development Office, which are available for technical assistance.

Target Groups for Continuous Training and Curricular Priorities

The schedule for presenting topics will be determined based on needs identified through ongoing monitoring of affirmative action efforts in the Department. The audience will be identified similarly.

As a place to start, the following groupings of staff and topics of training are suggested:

Target Staff Groupings	*Training Focus*
Executive Staff	Policy Leadership Strategies
Personnel, Training and Labor Relations Staff	Communicating Affirmative Employment Practices
Middle Managers	Policy Leadership Strategies
	Managing an Integrated Work Force
First Level Supervisors	Managing an Integrated Work Force
Employee Advocates (Advisory Councils, AA Committees, Union Representatives)	Employee Rights and Recourses
Professionals and Paraprofessionals	Service Delivery Issues
Technicians, Skilled Craft, Service Maintenance, and Clerical Workers	Employee Rights and Recourses
	Working in an Integrated Work Force.

Planning and Reporting on Continuous Training

The annual affirmative action report, which is due to be published each March 1, includes a section on "Training Employees in Affirmative Action," and includes projections on affirmative action/equal opportunity training for the coming year. Descriptions will include a statement of objectives, content, anticipated audience, and estimated date of presentation. (See also, "Annual Report")

After the presentation, results of the training, including a list of attendees, will be reported to the Staff Development and Training Section, which will consolidate necessary information for the quarterly affirmative action report.

Resources

A variety of resources exist in this Department which managers may call on for assistance in planning or carrying out training. Expertise is available from the following:

Affirmative Action Office
Human Resource Planning and Development Office
Division of Civil Rights and Intercultural Relations
Office of Vocational and Educational Services for Individuals with Disabilities
Native American Education Unit
Bureau of Veterans' Education
Division of Bilingual Education
Commissioner's Task Force on Equal Opportunity for Women
Commissioner's Affirmative Action Advisory Committee.

Community-based and professional organizations representing various protected classes are often willing to provide in-service training at little or no cost. The recruitment list in the Appendix of this plan includes many suggestions.

In addition, throughout the year, there are dates or periods of time designated to commemorate the special contributions of protected class groups or individuals. At these times various community events are scheduled and can offer educational opportunities. Significant dates include the following:

January:	Martin Luther King Jr.'s Birthday
February:	Black History Month
March:	Women's History Week
September:	Hispanic Heritage Week
October:	National Employ the Handicapped Week
November:	Veterans Day

PART VIIIa

Program Evaluation and Reporting

Evaluative data are collected by the Affirmative Action Office from a variety of sources, collated and analyzed, and reported to top management of the Department on a quarterly, annual, and special needs basis. The purpose is to review progress and problems, to disseminate information about successful or unsuccessful strategies, and to indicate the need for changes in policy or action to overcome obstacles to progress. These data also provide bases for determining what the affirmative action rating should be on managers' performance evaluations.

Quarterly Statistical Analyses

On a quarterly basis, gender and ethnic representation in various occupational categories are statistically analyzed for offices within each of the seven major areas. Comparison is made with baseline data and with intermediate goals projected annually toward final goals. When goals are not achieved, further examination of personnel transactions and practices can be undertaken to determine where problems may be occurring.

Quarterly and Annual Narrative Reporting

Quarterly and annual narrative reports are obtained by the Affirmative Action Office from managers in each of the seven main areas of the Department. These reports include descriptions of recruiting, training and other activities not observable from statistical data. The reports also describe obstacles, and the strategies being applied to overcome them.

Affirmative Action Committee

As described earlier in this plan, the Affirmative Action Committee includes protected class employees from various Department areas. The committee meets quarterly to review report information and to make recommendations for policy, procedures, or strategies which are expected to improve the affirmative action effort.

Random Compliance Auditing

At the discretion of the Affirmative Action Officer and with the approval of the Commissioner, random audits of various offices and personnel practices are undertaken. Audits follow procedures similar to those of external monitoring authorities in order to be comprehensive. Results of these audits are shared with the Commissioner, the appropriate Deputy, and the manager of the office audited. Audit reports include an evaluation of:

- extent of compliance with State and Federal mandates
- extent of compliance with the Department's Affirmative Action Plan
- identification of problem areas and successes
- recommendation for improvement, reward or negative sanction.

Critical Incidents and Issues

Through liaison with interested community groups or individuals and through the investigation and resolution of affirmative action/equal opportunity complaints, the Affirmative Action Office becomes an observer of critical incidents and key issues not clearly reflected by other sources of data.

PART IX

Minority/Women-Owned Business Enterprise Program

Policy Statement:

The Department has a long-standing and continuing commitment to the goal of encouraging minority and women-owned business enterprises to be providers of goods and services and to be vendors for construction and other projects. This is an integral part of our affirmative action/equal opportunity program. As an organization, we recognize the need to actively pursue affirmative action as a means to promote employment of minority group persons and women and to assure that minority and women-owned businesses are provided the opportunity to participate, to the fullest extent possible, in all of the State's procurement programs.

Under the auspices of Executive Order 21 and in accordance with the provisions of Article 15-A of the Executive Law and the State Finance Law, the Department maintains an active and successful program of locating, identifying and purchasing from minority and women-owned vendors and providers of services and encourages their participation in our procurement programs. The Department's long-term goal is to continue to increase our percentage of discretionary purchases and contracts from among minority and women-owned vendors and providers of service.

The Division of Education Business Management Services is responsible for administering the minority and women-owned business enterprise program (M/WBE) on behalf of the Department. It is our expectation that Department program managers and staff will make a concerted effort to identify and recruit M/WBEs as vendors, suppliers, contractors and consultants where the discretion exists to award contracts in order to reach our stated goals of increasing our percentage of discretionary purchases and contracts from among M/WBEs.

Definitions:

1. Minority Business Enterprise. Any business enterprise which is at least fifty-one percent owned by, or in the case of a publicly owned business, at least fifty-one percent of the stock of which is owned by, citizens or permanent resident aliens who are:
   (a) Black persons having origins in any of the Black African racial groups not of Hispanic origin;
   (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of ethnicity;
   (c) Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands; and
   (d) American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification;

   and such ownership interest is real, substantial and continuing. The minority and women-owned ownership must have and exercise the authority to independently control the business decisions of the entity.
2. Women-Owned Business Enterprises. Any business enterprise which is at least fifty-one percent owned by, or in the case of a publicly owned business, at least fifty-one percent of the stock of which is owned by citizens or permanent resident aliens who are women, and such ownership interest is real, substantial and continuing.

Process and Procedures:

It is the responsibility of every Department employee who is empowered to initiate, develop, coordinate or administer a contract or to initiate and authorize a purchase order or any other similar request for goods or services to be aware of and knowledgeable about the Department's policy and procedures regarding minority and women-owned businesses. Staff with either purchasing or contract responsibilities should be familiar with the workings of the Department's purchasing and contract preparation processes, the requirements of the New York State Contract Reporter, the State's Directory of Certified Minority and Women-Owned Business Enterprises and the general availability of minority and women-owned businesses as potential suppliers, vendors, providers of service, subcontractors or contractors. (The Department's *Administrative Policy Handbook* (1990) contains specific additional information on each of the above items.)

- Purchasing: staff initiating purchase requisitions should use the Directory of Certified M/WBEs as a potential source for providers of service and supplies (commodities). Staff should also actively seek out and solicit M/WBEs from any other source in order to expand the potential bidders list or at a minimum to determine, after a reasonable search effort, that M/WBE suppliers or providers of service are not otherwise available for that specific purchase request. Additional information is available from the Division of Education Business Management Services, the Purchase Section and the *Administrative Policy Handbook* (1990).
- Contract Administration: staff authorized to initiate contracts, including contracts with not-for-profit educational organizations or groups, should consult the Directory of Certified M/WBEs and also identify additional potential M/WBE providers of service to be included in the potential bidders list. It is the responsibility of the staff person administering the contract to seek out, solicit and include M/WBEs as potential contractors *before* any selection is made or contract is awarded. In accordance with Article 15A of the Executive Law, even if the prime contractor ultimately awarded the contract is not a certified M/WBE, it is the responsibility of the Department, as the agency administering the contract, to advise and monitor the performance of the selected contractor, so that the contractor solicits and awards any subcontracts or purchase supplies and/or services from certified M/WBEs.

In brief, the M/WBE policy of the State Education Department, with respect to Article 15-A, requires that any person initiating and preparing a contract for bid actively and vigorously recruit M/WBEs as contractors, report the names and addresses of all M/WBEs solicited or provide a written statement to the Division of Education Business Management Services explaining why no M/WBEs could be identified to provide the contractual services needed. Furthermore, the person initiating the contract must advise all potential bidders of the Department's M/WBE policy, include appropriate M/WBE language in the contract document or request for proposal (RFP), advise potential bidders that is their responsibility if awarded the contract, to actively solicit certified M/WBEs as subcontractors and/or suppliers and to report regularly to the Department contract administrator on their activities with M/WBEs on forms supplied by the Department. Additional information is available from the Division of Education Business Management Services and the *Administrative Policy Handbook* (1990). Copies of all pertinent State rules and regulations (i.e.—Article 15-A of the Executive Law, etc.) are also available from the Division of Education Business Management Services.

PART X

Annual Report On Agency Affirmative Action Activities

To reduce printing costs, the annual report is not included in this publication. Copies are kept for reference purposes in the Affirmative Action Office, Room 152, Education Building, Albany, New York 12234

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